

REMARKS

Applicants would like to thank the Examiner for the Interview of November 2, 2004, during which a discussion was held regarding a prior filed and accepted Terminal Disclaimer. As will be pointed out below, it is Applicants' understanding that the obviousness-type double patenting rejections issued in the July 8, 2004 Office Action have been overcome by the previously filed Terminal Disclaimer.

As an initial matter, Applicants would like to note a discrepancy in the July 8, 2004 Office Action. In the Office Action, Examiner contends that Claim 58 recites "a central input station being operably connected to the blood component collection instrument, the central input station comprising a program having a plurality of code segments, at least one code segment monitoring operation of a blood component collection instrument during operation of the blood component collection instrument." To the contrary, Applicants amended Claim 58 in the April 20, 2004 Preliminary Amendment to recite "a system server being operably connected to the blood component collection instrument, the system server comprising a program having a plurality of code segments, at least one code segment for monitoring an operation of the blood component collection instrument during operation of the blood component collection instrument." As such, throughout this action Applicants will refer to the language of the claims as recited in the Preliminary Amendment.

Rejections Under §103

Currently, Claims 58-90 are pending in the present application and have been rejected. Claims 58-90 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Langley (US 6,233,525) in view of Engleson (US 5,781,442) and further in view of Brown (US 6,451,203) and still further in view of Baluyot (US 5,132,026). No Claims have been amended, cancelled, or added. Therefore, Claims 58-90 remain at issue. Applicants respectfully traverse each of these rejections and request reconsideration in view of the arguments set forth below.

The law is clear that there must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the modification suggested by the Examiner. "[T]he mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski et. al.*, 10 U.S.P.Q. 2d 1397, 1398, (Fed. Cir. 1989), *citing In*

re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Thus, a disclosure that teaches away from, or discourages the making of the claimed invention undermines *prima facie* obviousness. See *In re Sponnoble*, 405 F.2d 578, 587 (C.C.P.A. 1969). A reference teaches away “when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Thus, unless the references suggest the particular combination of elements themselves, they cannot render Applicant's invention obvious. See *In re Mahurkar Patent Litigation*, 831 F. Supp. 1354, 1374, 28 USPQ2d 1801, 1817 (N.D. Ill. 1993).

Independent Claim 58 recites “a system server being operably connected to the blood component collection instrument, the system server comprising a program having a plurality of code segments, at least one code segment for monitoring an operation of the blood component collection instrument during operation of the blood component collection instrument.”

The Examiner contends that this limitation is taught by Langley in FIG. 5 at column 13. (July 8, 2004 Office Action, Page 4). Applicants respectfully disagree. The “transfer/download collection device controller” step of FIG. 5 refers to the transfer/download of an “initial procedure order” to a collection device controller (see col. 13, ll. 26-31). The initial procedure order “specifies the various process control parameters associated with the selected collection procedure” (see col. 13, ll. 20-25). For example, the initial procedure order may specify single needle or double needle, total procedure time, etc. (see col. 13, ll. 16-25).

Downloading an initial procedure order (e.g., number of needles, total procedure time, etc.) to a collection device controller does not perform the function of “monitoring an operation of the blood component collection instrument during operation of the blood component collection instrument.” Downloading an initial procedure order does not monitor anything. In addition, downloading the initial procedure order is completed *before* the procedure begins, not *during* the procedure.

The Examiner also contends that this limitation is taught through the “perform collection procedure” and “data transfer back to central station” steps of FIG. 5 of Langley. Applicants respectfully disagree. The “perform collection procedure” and “data transfer back to the station” also do not teach “monitoring an operation of the blood component collection instrument during operation of the blood component collection instrument.”

Conversely, Langley teaches away from “a system server comprising a program having a plurality of code segments, at least one code segment for monitoring an operation of the blood component collection instrument during operation of the blood component collection instrument.” Langley teaches that the data is transferred back to the central station *only after* the collection procedure is completed. Data is not transferred *during* the collection procedure. As stated in col. 14, ll. 12-15, “Once the procedure is completed, certain data is transferable (via the disk 142 or electronically as noted) back to the central input station 148” (emphasis added). Thus, any modification suggesting Applicants’ claimed invention can only be a result of hindsight analysis. Such an analysis is insufficient to present a *prima facie* case of obviousness. See *In re Sponnoble*, 405 F.2d at 587 (C.C.P.A. 1969). Therefore, Applicants submit that the §103 rejection of Claim 58 has been obviated in view of the above arguments. Based on the foregoing, Applicants respectfully request allowance of Claim 58.

Claims 59-81 and 89-90 depend on Claim 58 and include all the limitations of Claim 58. Based on the same reasons given for allowance of Claim 58, Applicants respectfully request that the rejections of Claims 59-81 and 89-90 be removed and the claims allowed.

Independent Claim 82 recites “a first segment for reading information from a blood component collection instrument during operation of the blood component collection instrument.” Examiner contends that Langley in view of Brown renders Applicants’ Claim 82 obvious. Examiner states that “Langley does not expressly disclose but Brown discloses” a first segment for reading information from a blood component collection instrument during operation of the blood component collection instrument. Examiner further suggests that “it would have been obvious to use the blood process monitoring portion of Brown with the system of Langley.” Applicants respectfully disagree.

As noted above, a disclosure that teaches away from or discourages the making of the claimed invention undermines *prima facie* obviousness. A reference teaches away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference. Langley specifically notes that data is transferred back to the central station *only after* the collection procedure is completed. Data is not transferred *during* the collection procedure. See col. 14, ll. 12-15. Thus, any modification suggesting Applicants’ claimed invention can only be a result of hindsight analysis and is thus insufficient to present a *prima facie* case of obviousness. Thus, Applicants submit that the §103 rejection of Claim 82

has also been obviated in view of the above arguments. Based on the foregoing, Applicants respectfully request allowance of Claim 82.

Claims 83-87 depend on Claim 82 and include all the limitations of Claim 82. Based on the same reasons given for the allowance of Clam 82, Applicants respectfully request that the rejections of Claims 83-87 be removed and the claims allowed.

Double Patenting

In paragraphs 5-8 of the Office Action, Examiner has rejected Claims 58-88 under obviousness-type double patenting. As indicated above, pursuant to Examiner's Interview of November 2, 2004, Applicants understand that the previously filed Terminal Disclaimer of April 20, 2004 obviates these obviousness-type double patenting rejections.

CONCLUSION

In view of the foregoing, Applicants respectfully request that all pending claims be allowed. Applicants invite the Examiner to contact the undersigned attorney to discuss any matters pertaining to the present application.

Respectfully submitted,

Dated: November 8, 2004

By: 

James P. Muraff, Reg. No. 39,785
Wallenstein Wagner & Rockey, Ltd.
311 South Wacker Drive, 53rd Floor
Chicago, Illinois 60606-6630
312.554.3300

CERTIFICATE UNDER 37 C.F.R. § 1.10

Express Mail Label No. EV 381275301 US

Date of Deposit: November 8, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service, postage prepaid, under 37 C.F.R. § 1.10 on the date indicated above and is addressed to: Mail Stop Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Gillian Gardner/212978